

VANCE W. DIGHANS
LEON S. WRIGHT

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. 3833 (943).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper office of the BLM within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite or tunnel site filed for recordation shall be accompanied by a service fee of \$5. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Where mining claims are located between July 8 and July 18, 1982, and copies of

the location notices are submitted to the Bureau of Land Management Oct. 14, 1982, without the required service fees, there is no recordation within the 90 days allowed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Patrick H. Shellady, Esq., Spokane, Washington, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken on behalf of Vance W. Dighans and Leon S. Wright from the Idaho State Office, Bureau of Land Management (BLM), decision of October 20, 1982, which returned, unrecorded, the location notices for the De Plat Nos. 49 through 103, and Nos. 111 through 130 lode mining claims because no filing fees of \$5 per claim were paid for the recordation, as required by 43 CFR 3833.1-2(d). The mining claims were declared abandoned and void.

The claims were located between July 8 and July 18, 1982. Notices of location were recorded in Bonner County, Idaho, August 16, 1982. Copies of the location notices were submitted to BLM October 14, 1982, but no payment of the required service fee was made.

Appellants state that the fee was included with the location notices as indicated in the cover letter from their attorney. A photo copy of the check was included with the appeal.

[1, 2] Regulations implementing section 314 of FLPMA are contained in 43 CFR Subpart 3833. Section 3833.1-2(b) requires that, for mining claims located after October 21, 1976, a copy of the official record of the notice of location must be filed in the proper office of BLM within 90 days after the date of location. "Filed" means being received and date stamped by BLM. Section 3833.1-2(d) states that each claim recorded with BLM shall be accompanied by a \$5 service fee, and that location notices tendered without payment of the service fee shall be returned unrecorded by BLM. Thus, without payment of the full service fee, there is no recordation of the mining claims with BLM. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981); Fred W. Croxen III, 56 IBLA 318 (1981); Brewery Hill Mining Co., 49 IBLA 197 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus, as no payment of the service fees was made to BLM within the 90-day period prescribed by FLPMA, the claims are properly declared abandoned and void.

[3] Section 3833.4 provides that failure to file any instrument required by FLPMA within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas B. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge